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Attorney for Nintendo of America Inc.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

In re DMCA Subpoena to Discord, Inc.

MISC. CASE NO. 3:23-MC-80109

**DECLARATION OF MARC E. MAYER
IN SUPPORT OF DMCA SUBPOENA
DISCORD, INC. PURSUANT TO 17
U.S.C. § 512(H)**

I, Marc E. Mayer, declare as follows:

1. I am an attorney at law, duly licensed to practice law in the State of California and before this Court. I am, through my professional corporation, a partner in the law firm Mitchell Silberberg & Knupp, LLP (“MSK”). MSK is counsel for Nintendo of America Inc. (“NOA”). NOA’s copyrights include, but are not limited to, the copyright-protected and unreleased special edition art book for The Legend of Zelda: Tears of the Kingdom (the “Art Book”). MSK is authorized to act on NOA’s behalf in the protection of copyrights and/or exclusive rights possessed by NOA pertaining to the Art Book.

2. NOA is requesting the attached proposed subpoena that would order Discord Inc. (“Discord”) to disclose the identity, including the name(s), address(es), telephone number(s), and e-mail addresses(es) of the user Julien#2743, who is responsible for posting infringing content that

1 appeared at the following channel Discord channel Zelda: Tears of the Kingdom
2 (<https://discord.gg/ACmJp8N7GG>) (the “Infringing Channel”). The purpose for which this
3 subpoena is sought is to obtain the identity of the Discord user Julien#2743, who posted infringing
4 content that appeared on the Infringing Channel.

5 3. The information obtained will be used only for the purposes of protecting the rights
6 granted to NOA under the Copyright Act.

7 4. Under 17 U.S.C. § 512(c)(3)(A), NOA submitted a takedown notice to Discord
8 identifying the infringing content posted by the infringing user(s) and providing the information
9 required by 17 U.S.C. § 512(c)(3)(A). A true and accurate copy of the submitted notification is
10 attached hereto as Exhibit 1.

11 I declare under penalty of perjury under the laws of the United States of America that the
12 foregoing is true and correct to the best of my knowledge, information and belief.

13 Executed in Los Angeles, California on April 7, 2023.


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EXHIBIT 1

From: Support
To: [Legal DMCA Policy](#)
Subject: RE: Notice of Infringement: Nintendo of America Inc. - The Legend of Zelda: Tears of the Kingdom
Date: Tuesday, February 21, 2023 11:49:40 AM

- Please type your reply above this line -##

Your request is 32564937 has been updated. To add additional comments, reply to this email.

Jack Bohannon (Discord)

Feb 21, 2023, 09:47 PST

Hello,

Thank you for getting in touch with our team. We will initiate the process in issuing a DMCA Violation Notice, and the content will be removed promptly. If you have any questions in the meantime please let us know here.

Sincerely,
Discord Legal

NOALegal

Feb 21, 2023, 09:39 PST

Dear Discord,

This notice is provided pursuant to the Digital Millennium Copyright Act, 17 USC § 512. I write to request that you remove or disable access to the following URLs (also provided in attached document):

<https://discord.com/channels/916696914630701106/1077008639941943377/1077296179819319307>

<https://discord.com/channels/916696914630701106/1077008639941943377/1077301211155402903>

<https://discord.com/channels/916696914630701106/1077008639941943377/1077008807445680139>

<https://discord.com/channels/916696914630701106/1077008639941943377/1077305803079426169>

<https://discord.com/channels/916696914630701106/1077008639941943377/1077391158805811230>

<https://discord.com/channels/916696914630701106/1077008639941943377/1077378281000685648>

The reported links, from the Tears of the Kingdom Official Discord server, feature images or provide download links to images from Nintendo's copyright-protected and unreleased special edition art book for The Legend of Zelda: Tears of the Kingdom video game in violation of Nintendo's rights. Although the server name includes the word "Official", the server is not operated or authorized by Nintendo. Additional information about the game can be found at the following link on Nintendo's official website: <https://www.nintendo.com/store/products/the-legend-of-zelda-tears-of-the-kingdom-switch/>

I have a good faith belief that this use of Nintendo's IP is not authorized by the copyright owner, its agent, or the law. I hereby state that the information herein is accurate and, under penalty of perjury, that I am authorized to act on Nintendo of America Inc.'s behalf.

Please contact us with any questions. This notice is not intended to and shall not waive or prejudice any rights and remedies that Nintendo may have at law, in equity, or otherwise. Any and all such rights and remedies are hereby expressly reserved.

Sincerely,
Jen Qualls

Attachment(s)

[Discord_DMCA LOZ TOTK art book.pdf](#)

From: Support
To: [Legal DMCA Policy](#)
Subject: RE: Notice of Infringement: Nintendo of America Inc.
Date: Wednesday, February 22, 2023 5:16:57 PM

- Please type your reply above this line -##

Your request is 32576484 has been updated. To add additional comments, reply to this email.

Jack Bohannon (Discord)

Feb 22, 2023, 15:16 PST

Hello,

Thanks for your message.

We have issued a warning to the server for the reported activity.

Additionally, if you are concerned about potential consumer confusion, and wish to file a complaint of alleged trademark infringement, you can submit a report using the Discord trademark infringement report form here:

https://support.discord.com/hc/requests/new?ticket_form_id=5410408552343

You can find additional information regarding Discord's Copyright and Trademark policies below:

<https://support.discord.com/hc/articles/4410339349655-Discord-s-Copyright-IP-Policy>

Sincerely,
Discord Legal

NOALegal

Feb 21, 2023, 19:11 PST

Dear Discord Abuse Team,

Nintendo of America Inc. requests immediate review and takedown of the Tears of the Kingdom Official Discord server pursuant to Discord's Community Guidelines which prohibit users from using Discord's "...services to commit any crime or infringe anyone's intellectual property rights."

As mentioned in the follow-up email to our original DMCA complaint (Request [#32564937](#)), server members continue to distribute Nintendo's copyright-protected and unreleased special edition art book for The Legend of Zelda: Tears of the Kingdom by posting links, instructing members to DM other members for links, and providing direct links through server posts or in their member profile information. Additionally, some members have been assigned the role of "The PDF Pirate" which identifies them as a source for PDF files of the infringing art book images. For your review, we have also provided screenshots from the server featuring four members and a brief description below highlighting their activity in the server.

1. Member: ravio – dm for pdf aka @wyrmmilk

- a. Updated server username to "ravio-dm for pdf" and instructs members to DM for the link
- b. States they have sent the link to "like 200 people lol"
- c. Roles include "THE PDF PIRATE"

Post link(s):

<https://discord.com/channels/916696914630701106/1077327287416012900/1077673844589985895>

<https://discord.com/channels/916696914630701106/1077327287416012900/1077673898725867551>

<https://discord.com/channels/916696914630701106/1077327287416012900/1077721840715300944>

2. Member: DM for PDF² aka @Ariel.#1983

a. Updated server username to "DM for PDF²" and instructs members to DM for the PDF link they sent

b. Roles include "THE PDF PIRATE"

Post link(s):

<https://discord.com/channels/916696914630701106/1077327287416012900/1077673338991804466>

3. Member: Cam – Lead Dr Pepper fan aka @Camtheyam#9405

a. Includes link to Google doc of PDF of the infringing images in profile (link reported to Google)

b. Instructs members to DM for link/file of infringing images

c. Roles include "THE PDF PIRATE"

Post link(s):

<https://discord.com/channels/916696914630701106/1077327287416012900/1077673676994003045>

<https://discord.com/channels/916696914630701106/1077327287416012900/1077674593873043536>

<https://discord.com/channels/916696914630701106/1077327287416012900/1077674078946734120>

4. Member: DM FOR TOTK ARTBOOK aka @kate!#0001

a. Updated server username to "DM FOR TOTK ARTBOOK"

b. In post included DISCORD link for PDF attachment of infringing images

Post link(s):

<https://discord.com/channels/916696914630701106/1077327287416012900/1077663983252811797>

Attachment(s)

[Discord_DMCA LOZ TOTK_art book 2 Screenshots.pdf](#)
